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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,233	08/01/2001	Christian Knopfle	60,500-072	6017

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EXAMINER

PHILOGENE, PEDRO

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 12/29/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/921,233

Applicant(s)

KNOPFLE ET AL.

Examiner

P dro Philogene

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-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6,8-12 and 28-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,8-12 and 28-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 15.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,4,6, 8-12,28-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wellisz et al (6,511,482)

With respect to claims 1, 2, 4, 6, 8 12, 28-37 Wellisz et al disclose a self-retaining implant for attaching a bone cover or a bone fragment to a skull, the implant (120) comprising a support element (121) having an upper side and a lower side, the lower side for facing a surface of the bone cover or the bone fragment; as best seen in FIG.10; and an extension (223) extending from the lower side of the support element in such a manner that the support element and the extension form a T-shaped structure; as best seen in FIG.10; and supporting therefrom at least one spike (223a) toward the bone cover or bone fragment and can be driven laterally into the bone cover or bone fragment; as best seen in Fig. 10; wherein the support element comprises two support arms; as best seen in FIG.10, extending in opposite direction from the extension (223) the first of the two support arms cooperating with the skull and the second of the two support arms cooperating with the bone cover or bone fragment ; as set forth in column 5, lines 41-67, column 6, lines 1-31.

It is noted that the spike of Wellisz et al did not extend substantially parallel to the support element, as claimed by applicant. However, Wellisz et al teach of a spike

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forming an angle of 45 degrees instead of an angle of 90 degrees to make the support and the spike parallel; as claimed by applicant. But, it would have been obvious to one having ordinary skill in the art at the time the invention was made to reach the 90 degrees angle, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, USPQ 233; or discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 4, Wellisz et al disclose an implant wherein the support element has a strip-like form; as best seen in FIG.10.

With respect to claim 6, Wellisz et al discloses an implant wherein the spike extends from an end of the extension remote from the support element; as best seen in FIG.10.

With respect to claims 8, 28, Wellisz et al. disclose an implant wherein the spike comprises sharpened edges; as set forth in column 5, line 60.

With respect to claim 9, Wellisz et al disclose an implant wherein the support element defines a screw hole (33, 33a) therethrough.

With respect to claims 29-37, Wellisz et al discloses all the limitations, as set forth in column 4, lines 25-67, column 5, lines 1-67, column 6-lines 1-30; and, as best seen in FIG.10.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wellisz et al. (66,511,482) in view of Hair (6,197,037).

With respect to claim 5, it is noted that Wellisz et al did not teach of a lower side of the support having a concave or spherically curved at least in section; as claimed by applicant. However, in a similar art, Hair evidences the use of a fastener having a concave or spherically curved lower side to tightly engage the outer surface of the bone and promote gripping action.

Therefore, given the teaching of Hair, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the curved lower surface of the device of Hair in the device of Wellisz et al. side to tightly engage the outer surface of the bone and promote gripping action.

Claims 10, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wellisz et al. (6,511,482) in view of Pohndorf et al. (5,904,683).

With respect to claim 10, it is noted that Wellisz et al. did not teach of a support element having a thickness increasing in the direction of the screw hole; as claimed by applicant. However, Pohndorf et al. evidence the use of a support element having a thickness increasing in the direction of the screw hole to strengthen the support element for receiving a screw and stabilize a bone.

Therefore, given the teaching of Pohndorf et al. it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the increasing thickness of Pohndorf et al in the support element of Wellisz et al to strengthen the support element for receiving a screw and stabilize a bone.

With respect to claim 11, Pohndorf et al teach a screw hole that is spherically curved, as best seen in FIG.11.

Response to Amendment

Applicant's arguments with respect to claims 1-2,4-6,8-12,28-37 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

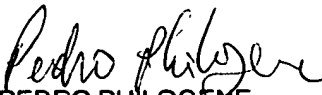
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (703) 308-2252. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Pedro Philogene
December 22, 2003


PEDRO PHILOGENE
PRIMARY EXAMINER